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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/751,748

01/06/2004

Edouard Van Lier

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EDOUARD VAN LIER  
2 ZWALUWENLAAN  
WEMMEL  
BRUSSELS, 1780  
BELGIUM

12/28/2007

EXAMINER

FERTIG, BRIAN E

ART UNIT

PAPER NUMBER

4124

MAIL DATE

DELIVERY MODE

12/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/751,748

**Applicant(s)**

VAN LIER, EDOUARD

**Examiner**

Brian Fertig

**Art Unit**

4124

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 1/6/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 3-9 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claims 3-9 have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-2 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph. The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device or the steps which comprise the method must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited. The follow errors are provided by way of example and not inclusive of all errors present.

#### **With respect to claim 1**

The claim language encompasses only statements which contain no patentable distinctions (i.e. narrative statements and statements directed toward intended results see MPEP § 2106). Examples include clauses beginning with 'using a concept of . . .', 'in

order to . . .', 'by . . .', 'thus . . .'. Within the context of the claim, terminology such as; 'systematically', 'eventually', and 'good value', are vague and indefinite.

With respect to claim 2

This claim recites limitations referring to implementation of a program in 'Microsoft Excel'. This reference to a trade name renders these limitations indefinite because the subject matter to which the trade name refers, can be changed at the whim of the trade name owner. Within the context of the claim, terminology such as; 'theoretically', 'a selected number of variables and factors', 'namely half', and 'influenced by', are vague and indefinite.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1 and 2 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With respect to claim 1

This claim is directed to a 'methodology.' As claimed, a methodology does not appear to be a process, machine, manufacture or composition of matter. While it might closely resemble a process, no positive steps are recited.

With respect to claim 2

Computer programs, *per se*, are not "physical things" and do not define any structural and functional interrelationships between the computer program and other

claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See MPEP § 2106.01.

### ***Art Based Rejection***

6. In view of the narrative form of the claims and the absence of ascertainable method steps or structural elements, the claims were not sufficiently understood to make a rejection based upon prior art. The absence of a prior art rejection should not be construed as an indication of allowable subject matter.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US Patent 5,220,500 directed to a method for enabling a user to interactively create and modify a model of an investment strategy to be applied to data pertaining to a set of possible investment entities,

US Patent 6,484,151 directed to using a computer to select corporate stocks for investment

US Patent 6,601,044 directed to computer-based system is disclosed for creating a portfolio of assets and executing trades in the assets to modify the portfolio.

*Profiting from the Vargaries of Human Nature* by Andrew Capan, Global Investor, July/Aug 1994, issue 74, pg 17 teaching a contrarian investment fund that sells a portion of shares that increased to buy those that decreased.

*Against the Tide: Contrarian Picks for When the Market Turns* Aline Sullivan. International Herald Tribune. Paris: May 16, 1998. pg. 17 teaching the adoption of contrarian investing by major funds.

Vanguard Windsor Fund Prospectus, June 1, 1999. Retrieved 12/12/2007 from <http://www.sec.gov/Archives/edgar/data/107606/0000893220-99-000415.txt> teaching the implementation of contrarian investing, including discussion of taxes, administration fees, diversification, and risk in such an investment.

8. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.
9. A listing of registered patent attorneys and agents is available on the USPTO Internet web site <http://www.uspto.gov> in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Fertig whose telephone number is (571) 270-5131. The examiner can normally be reached on Monday - Friday 8:30am to 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Bomberg can be reached on (571) 272-4922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

-bf

/Kenneth Bomberg/  
Supervisory Patent Examiner, Art Unit 4124